

CALIFORNIA FRANCHISE TAX BOARD

Legal Ruling No. 167

November 5, 1957

BASIS: VALUATION OF PROPERTY ACQUIRED BY INHERITANCE

Syllabus:

The basis of property acquired by inheritance is its fair market value at the time of decedent's death which is presumed to be the valuation placed on the property for California Inheritance Tax purposes. This presumption may be rebutted, however, by substantial evidence of a different value.

At the time of his death, decedent owned 50% of X Corporation, X was in the process of dissolution and had substantial Federal tax refund claims pending. Ten months after decedent's death the tax refund claims were paid to X. The Board of Directors then distributed the net proceeds to the stockholders. Decedent's estate reported the distribution as capital gain in its state tax return. The stock had been undervalued for estate and inheritance tax purposes because of a low valuation on the pending refund claim. When the claim was allowed, decedent's estate filed a claim for refund on the theory that the basis of the stock should be increased and the gain on the distribution correspondingly decreased, which reduction would result in there having been an overpayment of income tax.

Advice is requested as to the proper valuation of the stock at decedent's death.

The basis of the stock is its fair market value on the date of decedent's death. Section 18044 Personal Income Tax Law. Regulation 17746(3) provides that fair market value is deemed to be the valuation placed on property for California Inheritance Tax purposes. This regulation is taken from Federal Regulation 113(a)(5)-1(c) which provides that the fair market value for federal income tax purposes shall be based on the Federal Estate Tax valuation. The courts and federal rulings have construed the Federal Regulation to raise only a rebuttable presumption which may be overcome by substantial evidence of a different value. Revenue Ruling 54-97. Under the Meanley v McColgan (49 Cal. Ap. 2d 313) rule the same interpretation must be given the State regulation. The evidence is clear that the Internal Revenue Service had decided to allow the claims of X in an amount in excess of the Inheritance Tax valuation on such claims on or before the decedent's death. Under the circumstances the presumption is rebutted and the taxpayer is entitled to increased valuation.